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## Library Database Search Tips

### *Jury Instructions*

Looking for Arizona jury instructions? They are available online in two different ways, from the Library's intranet page:

<http://courts.maricopa.gov/lawlibrary/LawLibraryWeb.asp>

To access jury instructions on *Wendell*, the *Arizona Judicial Reference Site*, click on the link provided at the bottom of the second column (or go directly to the Wendell site: <http://supreme7/wendell/>). When the Wendell screen opens, on the left side of the page click on *Jury Instructions*. Carefully read the instructions, then click on *Revised Arizona Jury Instructions ONLINE*. After entering the email address and password provided, click on *Arizona's Account* in the upper right

hand corner. Select either *Civil Jury Instructions* or *Revised Arizona Jury Instructions (Criminal)*. The instructions open as a Table of Contents. You may click on any instruction to open and print if desired.

To use *Loislaw*, click on the link provided on the Library's intranet page, under *Research Databases*. At the *Welcome to Loislaw.com* screen, click on *Search Databases by Jurisdiction*. Scroll down until you see *State Libraries*. Click on *Arizona* then click on *Open State Bar Books*. Select the desired instructions - either *AzBar: Revised AZ Jury Instructions (Civil)* or *AzBar: Revised AZ Jury Instructions (Criminal)* - by checking the adjacent box, then click *CONTINUE* at the bottom of the screen. You can select *Table of Contents* at the top of the page or search by using key words. If you search using key words, be sure and click the *RUN SEARCH* button as opposed to hitting the enter key.

### *KeyCite*

Also available on the Library intranet is *KeyCite*, the citator service from West Group. The Library recently replaced *Shepard's Citations* with *KeyCite* for online citation checking. *KeyCite* is available to all Library, Court and County users.

To access *KeyCite* from the Library's intranet page, click on the *KeyCite* link in the *Westlaw* column. When the *Westlaw.com* screen opens, locate "KeyCite this citation" on the left side of the screen, enter your citation in the box bellows, and click *Go*. If you are not sure of the proper citation format or abbreviations, locate and click on the *KeyCite* link at the top of your screen, and scroll down to "To view a list of publications and publication abbreviations

that can be used in KeyCite, click [Publications List](#)." Once you have found the proper format and abbreviation for your citation, you can enter it into the KeyCite search box, at the bottom of your screen.

Once you have searched a few citations, you should find KeyCite fairly simple and straightforward to use. Under the Westlaw column on the Library intranet page, there is also a link to *Using KeyCite in Westlaw.com*, a user guide in PDF format that will provide a complete overview of the KeyCite service.

If you wish to verify your citation checking in Shepard's, please contact the Reference staff at 506-3945.

### Do You Know?

1. Which state has a law prohibiting hunting in cemeteries?
2. Which state has a law that says "it shall be unlawful for any person to operate a motor vehicle upon the highway of this state when such person has in his or her embrace another person which prevents the free and unhampered operation of such vehicle?"
3. Which state provides a penalty for "injuring fruit, melons or flowers in the night time"?
4. In what state is it against the law to "erect or cause to be erected any gravestone or monument bearing any inscription charging any person with the commission of a crime?"
5. Which state has a law that sets out the license and permit fees for "a resident husband and wife frog license?"

### On the Internet

#### **Using DNA to Solve Cold Cases**

<http://www.ojp.usdoj.gov/dna/pubs-sum/194197.htm>

This report, prepared by the National Commission on the Future of DNA Evidence

(<http://www.ojp.usdoj.gov/nij/dna/>), is intended to help law enforcement agencies maximize their use of DNA evidence to clear unsolved cases.

This 23-page document provides an easy-to-understand, yet comprehensive, overview of the following topics:

- ❑ What is DNA evidence and how does it work?
- ❑ What are DNA databases and how can they be used?
- ❑ What are some practical considerations?
- ❑ How should cases be prioritized?

The report gives an overview of the four new DNA technologies: PRC, or polymerase chain analysis (a process that allows for the evaluation of a much smaller-sized sample than was previously possible); STR, or short tandem repeat (the method used to facilitate the evaluation of specific regions found on nuclear DNA); MtDNA, or mitochondrial analysis (which enables analysis when DNA from the nucleus of a cell is not available or when it has been degraded); and Y-chromosome analysis (a process that targets only the male fraction of a biological sample, permitting evaluation of a complex mixture of DNA).

Each state has a statute that establishes a local DNA database. CODIS, the software used to operate local, state and national DNA databases, allows DNA patterns to be compared and linked. Individual states also have unique "qualifying offenses" that specify the criteria necessary for inclusion in the database.

The report also discusses considerations in handling cold cases, including:

- ❑ Legal considerations, such as admissibility of DNA evidence in court.
- ❑ Statutes of limitations, as well as rules on who and/or what should be included in the DNA database.
- ❑ Technological considerations, such as how evidence should be collected and stored, and when the evidence should be subjected to other forensic tests.

- ❑ Practical considerations, including the willingness of victims and witnesses to proceed, and whether potential witnesses can even be located.
- ❑ Resource considerations, such as time and funding available for investigation and analysis.

DNA evidence can not only identify a suspect, it can also "place a known individual at a crime scene; refute a claim of self-defense; put a weapon in a suspect's hand; change a suspect's story from an alibi to one of consent," and, in the best of all worlds, prevent new crimes.

### Recent Arizona Cases

#### ***State v. Morrison***

1CA-CR 01-0789 (November 19, 2002)

<http://www.cofad1.state.az.us/opinionfiles/cr/cr010789.pdf>

In a case of statutory interpretation, the Arizona Court of Appeals has affirmed a trial court's ruling that allowed into evidence a phone conversation between a minor child and a third party that was recorded without either's consent.

When the minor child, whom the court refers to as "G," was fourteen, her mother read her diary and discovered sexual language and references to the defendant, who was thirty-five years old. The mother then installed a recording device on the family telephone.

The defendant was subsequently tried and found guilty of two counts of sexual abuse; one count of molestation of a child; four counts of sexual conduct with a minor; and one count of attempted sexual conduct with a minor. He appealed, relying heavily on A.R.S. 13-3005 and 18 U.S.C. 2511, both of which "criminalize the unlawful interception of wire, electronic, and oral communication." He argued that the phone conversations were recorded without his or G's consent and therefore should not have been admitted into evidence.

The court found that neither statute "provides for the exclusion of evidence obtained unlawfully," and a federal statute that "mandates exclusion of the contents of any intercepted communication in any trial before any court, including state courts" is not necessarily violated by the parental action (Title III of the *Omnibus Crime Control and Safe Streets Act of 1986*, 18 U.S.C. 2510, et seq.). Several federal courts have previously addressed this same issue and have upheld a parent's right to record phone conversations if the recording is done from an extension from within the home.

### From Other Jurisdictions

#### ***Dallas County v. Halsey***

Texas Supreme Court No. 01-0784

(October 24, 2002)

Sandra Halsey is a certified court reporter for the Dallas County Criminal Court District. She receives a salary for her work as well as additional income for preparing trial transcripts. She recorded the trial of *State v. Darlie Lynn Routier*. At the request of the County, Halsey submitted a transcript of the trial along with invoices totaling \$63,000.00. The County subsequently hired a second court reporter to review Halsey's work and that reporter later "testified to finding approximately 18,000 errors in the 6,000 pages of the record." Dallas County brought suit against Halsey for "fraud, breach of contract, and violations of the Texas Deceptive Trade Practices Act" and sought reimbursement of the \$63,000.00.

Halsey filed a motion for summary judgment arguing that as a court reporter she was protected by judicial immunity. The trial court denied her motion and Halsey filed an interlocutory appeal. The Court of Appeals reversed the lower court, holding that Halsey was entitled to judicial immunity.

The Texas Supreme Court subsequently granted the County's petition for review and ultimately ruled that a court reporter can be sued for producing a transcript "riddled with errors" and that a court reporter is not entitled to privilege of judicial

immunity. The court found that in certain contexts, "because court reporters do not engage in discretionary functions or exercise judgment comparable to that of a judge, they are not entitled to derived judicial immunity..."

## Article Reviews

### ***The Wind Done Gone: Transforming Tara Into a Plantation Parody***

Jeffrey D. Grossett, 52 Case Western Reserve Law Review 1113 (Summer 2002).

In June 2001, Houghton Mifflin Company published Alice Randall's first novel, *The Wind Done Gone*, a thought-provoking parody intended to explode the mythology perpetrated by the southern classic *Gone With the Wind*, by Margaret Mitchell. Randall's "deconstructs every assumption on which Mitchell's novel rests," and in doing so, borrowed extensively from the Mitchell novel.

In *Suntrust Bank v. Houghton Mifflin*, the Northern District of Georgia granted a preliminary injunction in favor of the Mitchell Trusts, prohibiting publication. The court decided that Randall's extensive copying of plots, settings and characters of *Gone With the Wind* constituted an "unauthorized sequel" and an "unabated piracy" of the original work.

On appeal, the Eleventh Circuit agreed that Randall's work does use the same copyrighted characters, plots, and settings of Mitchell's, but did this constitute infringement of the Mitchell Trusts authority to authorize all sequels?

This Comment examines the legal dispute that surrounded the publication of this "parody." Part I discusses the legal background of *Suntrust Bank*, focusing especially on the Supreme Court decision in *Campbell v. Acuff-Rose Music, Inc.* (the most definitive statement on parody as fair use). Part II gives a background of the *The Wind Done Gone* litigation. Part III presents the argument that the Eleventh Circuit ruled correctly in finding that the new work

altered the original for the purpose of parody, and explores the potential ramifications of the decision.

Under the Copyright Act, fair use provides a means for non-infringing use of copyrighted works under certain criteria: 1) whether the purpose and character of the use is of a commercial nature or for nonprofit purposes; 2) the nature of the copyrighted work; 3) the amount or portion of the copyrighted work used in relation to the work as a whole; 4) the effect on the potential market or value of the copyrighted work. Included as fair use are works that constitute parodies.

Houghton Mifflin argued that Randall's work is a parody intended to ridicule Mitchell's, exacts literary revenge on *Gone With the Wind* for its perceived offenses, reverses the negative conceptions of the Civil War era blacks perpetuated by Mitchell's work, and was not a sequel to the original. After reviewing the fair use guidelines, the Eleventh Circuit ruled that Randall's work constituted a protectable parody under the fair use criteria.

The Eleventh Circuit's decision "appears to expand significantly the fair use doctrine announced by the Supreme Court in *Campbell*," according to the author. Grossett believes that there will be three consequences of this decision: 1) future authors will have greater leeway in claiming fair use; 2) the need for a parody to be humorous has all but been eliminated; and 3) there will be an increased use of the First Amendment as a protection from copyright. Grossett is skeptical whether the expansion of fair use is for the better, because it actually authorizes future authors to raid original works for their own financial gain.

### ***Do You Know Who Your Physician Is? Placing Physician Information on the Internet***

Kristin Baczynski, in 87 Iowa Law Review 1303 (May 2002).

Should Americans have ready access to information concerning the background, credentials, and past misconduct of their

physicians? There have been many attempts to pass laws that would put this information within an easy grasp of most via the Internet, but at each turn, bills have hit roadblocks and resistance.

Baczynski's Comment addresses this question. The article is divided into three parts. Part 1 relates the history of federal legislative proposals concerning the Internet publication of physician information along with a discussion of state legislatures that have been successful in looking at this issue. Part 2 discusses arguments from both sides of the debate, and compares disclosure to the publication of sex offender information on the Internet. Part 3 concludes that the public has a right to this information that outweighs any privacy concerns.

With the passage of the *Health Care Quality Improvement Act of 1986*, the federal government began collecting information about physicians. Before this law, physicians with prior disciplinary actions or criminal convictions could simply move to another state and continue to practice medicine. To prevent this from happening, the National Practitioner Data Bank (NPDB) was created. Insurance companies were required to report medical malpractice payments, sanctions levied by state boards of medical examiners were required to be reported, and hospitals, professional societies, and health care entities were required to report physician review actions. This information was mandated to be confidential and the general public would not be provided easy access to it.

In 1996, the *Health Insurance Portability and Accountability Act* (HIPPA) was enacted, requiring that state and federal government agencies and health plans report final adverse actions against physicians to the Secretary of the Department of Health and Human Services. Again only health plans and government agencies were allowed access.

Several states (Massachusetts, Florida, Maryland, and California), however, succeeded in enacting legislation that gave individuals easy, searchable, and free

access via the Internet. These states have set the stage for further legislative and judicial decisions concerning information about physician malpractice, disciplinary actions, and criminal convictions.

The author finds that similarities between convicted sex offenders information and physicians information provide a useful comparison. Comparing these two different but similar databases demonstrates the benefits and pitfalls of creating legislation in this area.

Internet publication of sex offender information and physician information is compared under the following arguments: 1) the right to privacy; 2) availability of the information elsewhere; 3) publishing the information may result in offenders being punished twice or retroactively; 4) the predictive value of past misdeeds; and 5) uninformed or evil use of the published information.

The counter-arguments are that 1) there is protection against future misdeeds; 2) the information is already in the public domain; 3) the information should not be concealed from the public; and 4) the existing information is difficult to find and access.

The validity of state community notification statutes has been tested and generally has passed muster. The author concludes that responsible Internet availability of the NPDB "should survive judicial review, thus giving members of the public a great resource regarding the physicians that care for their physical and mental well being."

This article contains an appendix listing state Internet addresses for access to physician profiles.

### **Recent Articles: Technology and the Law**

Brunner, Lincoln. "Federal Decisions Expands Electronic Case Access: Pilot Program Puts Criminal Cases Online, but Only in Certain Federal Courts." *20 Legal Assistant Today* 20 (September/October 2002).

Clifford, Amanda. "Digital Courtroom: Doar's Facility Provides Research Opportunities for Legal Professionals." 20 *Legal Assistant Today* 30 (September/October 2002).

Davenport, Paul. "Privacy Concerns, Public Access Figure in Courts' Use of Internet." 102 *Arizona Capitol Times* 21 (October 25, 2002).

Legon, Jeordan. "Lady Justice Goes Digital: Yakima Traffic Offenders Get Their Day in Court Via the Web" (October 2, 2002), available at [www.cnn.com/2002/TECH/internet/10/02/email/court.index.html](http://www.cnn.com/2002/TECH/internet/10/02/email/court.index.html).

Leibowitz, Wendy R. "Digital Discovery Starts to Work: Judges Getting Involved Earlier in the Process." 25 *National Law Journal* C3 (November 4, 2002).

"Net Forces Scrutiny of Open Records" (October 17, 2002), available at [www.cnn.com/2002/TECH/internet/10/17/online.courtrecords.ap/index.html](http://www.cnn.com/2002/TECH/internet/10/17/online.courtrecords.ap/index.html).

Nguyen, Alexander T. "Here's Looking at You Kid; Has Face-Recognition Technology Completely Outflanked the Fourth Amendment?" 34 *University of West Los Angeles Law Review* 279 (2002).

O'Reilly, Chris and Jason Dertlin. "True Electronic Discovery Comes of Age." 2002 *Lawyers Weekly USA* 17 (November 11, 2002).

Smith, Justin H. "Press One for Warrant: Reinventing the Fourth Amendment's Search Warrant Requirement Through Electronic Procedures." 55 *Vanderbilt Law Review* 1591 (October 2002).

### New Books

McCarthy, Kevin F. *From Celluloid to Cyberspace: The Media Arts and the Changing Arts World*. Rand, 2002. PN 1959 .E96 M38 2002

Murphy, Patrick A. *Creditors Rights in Bankruptcy*. West Group, 2002. KF 1524 .M88

National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts, 12<sup>th</sup>. *The Court as Employer: Best Practices for Ensuring a Bias Free Environment and Attaining a Diverse Workforce*. New Jersey Courts, 2000. Court Admin KFN 2310.5 .A3 F58

Novotny, Eric. *Reference Service Statistics Assessment: A SPEC Kit*. Association of Research Libraries, Office of Leadership and Management Services, 2002. CMS Z 671 .A85 Kit 268

Pressman, David. *Patent Pending in 24 Hours*. Nolo, 2002. Self-Help KF 3120 .Z9 S75 2002

Reardon, Elaine. *Countywide Evaluation of the Long Term Family Self Sufficiency Plan: Countywide Evaluation Report*. Rand, 2002. HV 699.3 .C2 C68 2002

Repa, Barbara Kate. *Your Rights in the Workplace*. Nolo, 2002. Self-Help Collection KF3455 .Z9 R47 2002

Rowe, Evelyn F. *Comparative Negligence*. LexisNexis Matthew Bender, 2002. KF 1286 .S38 2002

Sherry, Lance. *The Decision Framework for Prioritizing Industrial Materials: Research and Development*. Rand, 2002. TA 402.5 .U6 S55 2002

Sinclair, Kent. *Trial Handbook*. Practising Law Institute, 2002. KF 8915 .S56 2002

Thatcher, Margaret. *The Rule of Law in a Dangerous World*. National Legal Center for the Public Interest, 1994. K 3171 .Z9 T53 1994

United States. Bureau of Justice Statistics. *Prosecutors in State Courts*. U.S. Dept. of Justice, 2001. Federal Documents J 29.11/15:2001

Warner, Ralph E. *Get a Life: You Don't Need a Million to Retire Well*. Nolo, 2002. Self-Help Collection HD 7125 .W375 2002

Watson, Peter S. *The Economic Arsenal in the War Against Terrorism*. National Legal Center for the Public Interest, 2002.  
KF 9430 .W37 2002

Woodhouse, Violet. *Divorce and Money: How to Make the Best Financial Decisions During Divorce*. Nolo, 2002.  
KF 3524 .Z9 W66 2002

World Peace Through Law Center. *World Jurist*. Foreign/International.  
KZ 24 .C672

Zaritsky, Howard M. *Tax Planning for Family Wealth Transfers Analysis with Forms*. Warren, Gorham & Lamont of RIA, 2002.  
KF 6572 .Z38 2002

### Do You Know? Answers

1. Oregon. Oregon Revised Statutes § 166.645. This offense is a misdemeanor.
2. Washington. Revised Code of Washington Annotated § 46.61.665, which says "operation of a motor vehicle in violation of this section is prima facie evidence of reckless driving."
3. North Carolina. General Statutes of North Carolina § 14-401.3. The statute also makes it the cemetery's owner or operator responsibility for removing or obliterating "such inscription."
4. Oklahoma. Oklahoma Statutes Annotated § 1772. Upon conviction, a person shall be punished by a "fine not exceeding One Hundred Dollars (\$100.00) and not less than Ten Dollars (\$10.00), or imprisonment in the county jail not exceeding thirty (30) days."
5. North Dakota. North Dakota Century Code § 20.1-03-12. A resident frog license can be purchased for three dollars.

### Contributors

Susan Armstrong, Editor  
Liz Fairman  
Corinne Guthrie  
Valerie Lerma  
Barbara Moren  
Richard Teenstra  
Jan Wolter